

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CHRISTOPHER DEAN KRYGER,

Petitioner,

vs.

WARDEN DAN SULLIVAN and THE
ATTORNEY GENERAL OF THE STATE OF
SOUTH DAKOTA,

Respondents.

4:22-CV-04086-LLP

ORDER GRANTING PETITIONER'S
MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS ON APPEAL

On June 29, 2022, Petitioner, Christopher Dean Kryger, an inmate at the South Dakota State Penitentiary, applied for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. This Court adopted the Magistrate Judge's Report and Recommendation in full, overruling Kryger's objection and granting Respondents' motion for judgment on the pleadings. Doc. 15. Judgment was entered, and Kryger's application for a writ of habeas corpus was dismissed with prejudice. Doc. 16. Kryger filed a notice of appeal, Doc. 17, a motion for leave to proceed in forma pauperis on appeal, Doc. 18, and provided the Court with prisoner trust account documentation but no completed prisoner trust account report, Doc. 19.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the Prison Litigation Reform Act do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

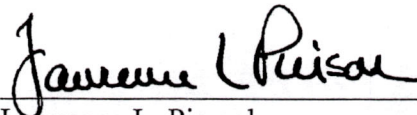
Kryger provides prisoner trust account documentation that indicates a total account balance of \$211.28 on August 1, 2022, and a current total account balance of \$182.76. *See* Doc. 19 at 1. Kryger has also submitted a letter in which he explains that he is having trouble acquiring a completed prisoner trust account report from prison officials. Doc. 19-1. Kryger's notice of appeal appears to be taken in good faith. This Court need only assess whether Kryger can afford to pay the full filing fee. Because Kryger has insufficient funds to pay the \$505.00 appellate filing fee, his motion for leave to proceed in forma pauperis on appeal, Doc. 18, is granted.

IT IS ORDERED:

1. That Kryger's motion for leave to proceed in forma pauperis on appeal, Doc. 18, is granted.

Dated this 6th day of February, 2023.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK

